THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CA No.1058/2019
IN
CP (IB) No. 340/Chd/Pb/2018

Under Section 33(2) of Insolvency and Bankruptcy Code, 2016.

In the matter of :

Punjab Basmati Rice Limited … Corporate Debtor

And in the matter of:

Mr. Sanjay Kumar Aggarwal,
Resolution Professional/Applicant
Punjab Basmati Rice Limited
R/O 14, New Punjab Mata Nagar
Main Street, Pakhowal Road,
Ludhiana-141013, Punjab …Applicant/Resolution Professional

Judgement delivered on: 18.12.2019

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)

For the Applicant :
1. Mr. Puneet Jain, Advocate for Mr. Rakesh Kumar Gupta,Advocate
2. Mr. Sanjay Kumar Aggarwal, RP, in person

Per: Pradeep R. Sethi, Member (Technical)

ORDER

The instant application is filed under Section 33 (2) of the Insolvency & Bankruptcy Code, 2016 (**Code**) read with Regulation 3 of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016 (**Liquidation Process Regulations, 2016**) praying *inter alia* for suitable orders for ordering the initiation of liquidation process of Punjab Basmati Rice Limited (**Corporate Debtor**).

2. It is stated that petition under Section 10 of the Code was admitted vide order dated 18.02.2019 and Shri Yogender Pal Singhal was appointed as Interim Resolution Professional and constituted the Committee of Creditors (**CoC**) consisting of 6 members. It is stated that as per the decision of CoC, Shri Sanjay Kumar Aggarwal was appointed as Resolution Professional vide order dated 23.05.2019 and invited expression of interest on 19.06.2019, 27.07.2019 and 25.09.2019 but no resolution plan was received. It is submitted that extension of 90 days for conclusion of Corporate Insolvency Resolution Process (**CIRP**) was granted by the Tribunal and the CIRP was thus extended to 23.11.2019.

3. It is stated that in the 11th meeting of CoC held on 07.11.2019, the Resolution Professional (**RP**) informed the CoC that he has not received any expression of interest/resolution plan from any prospective eligible resolution applicant even after issuance of third expression of interest in Form G on 25.09.2019 and that the CoC with more than 66% voting power decided to go for liquidation of the corporate debtor and also to continue the RP as Liquidator. The consent of the RP in Form AA is stated to be attached as Annexure A-2. It has been prayed that the initiation of liquidation process of the corporate debtor be ordered and Shri Sanjay Kumar Aggarwal, Registration No. IBBI/IPA-002/N-00126/2017-18/10295 be appointed as Liquidator.

4. We have carefully heard the learned counsel for the applicant and considered the arguments and have also carefully perused the records.

5. The provisions of Section 33(1) and (2) of the Code are as under:-

"33. Initiation of liquidation. –

(1) Where the Adjudicating Authority, -
(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of Section 30; or
(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,
It shall

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation;
and

(iii) require such order to be sent to the authority with which the corporate debtor is registered."

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

6. The present application is submitted under Section 33(2) of the Code. We note that the RP has filed the application on 15.11.2019 i.e. during the CIRP ending on 23.11.2019 and that despite invitation of EOI on three occasions, no EOI/resolution plan was received. We also note that during the 11th CoC meeting held on 07.11.2019, more than 66% of the voting share of CoC approved the decision to liquidate the corporate debtor. In view of the satisfaction of the conditions proved in Section 33(2) of the Code, a liquidation order as referred to in sub clauses (i), (ii) and (iii) of Clause (b) of Section 33(1)

of the Code is passed requiring the corporate debtor to be liquidated in the manner as laid down in Chapter III of the Code and the directions for issuance of public announcement stating that the corporate debtor is in liquidation and requiring such order to be sent with which the corporate debtor is registered are being issued.

7. As discussed above, the CoC with more than 66% voting share has resolved that the RP Shri Sanjay Kumar Aggarwal be appointed as Liquidator. The provisions of Section 34(1) of the Code provide that where the Adjudicating Authority (**AA**) passes an order for liquidation of the corporate debtor under Section 33, the RP appointed for the CIRP under Chapter II shall, subject to submission of written consent by the RP to the AA in specified Form, shall act as the Liquidator for the purposes of liquidation unless replaced by the AA under sub section (4) of the Code. The consent in Form AA of Shri Sanjay Kumar Aggarwal RP has been filed as Annexure A-2. The Law Research Associate of this Tribunal has checked the credentials of Sh. Sanjay Kumar Aggarwal and there is nothing adverse against him. Therefore, Shri Sanjay Kumar Aggarwal, Regn. No.IBBI/IPA-002/N-00126/2017-18/10295, #14, New Punjab Mata Nagar, Main Street, Pakhowal Road, Ludhiana-141013, e-mail id: sanjayaggarwal.fcs@gmail.com is appointed as Liquidator.

8. Regulations 39B, 39C and 39D in the CIRP Regulations, 2016 have been inserted by Notification No.IBBI/2019-20/GN/REG/048 dated 25.07.2019. These regulations are as follows:-

> *"39B.* ***Meeting liquidation cost.***
>
> *(1) While approving a resolution plan under sub-section (4) of section 30 or deciding to liquidate the corporate debtor under sub-section (2) of section 33, the committee may make a best estimate*

of the amount required to meet liquidation costs, in consultation with the resolution professional, in the event an order for liquidation is passed under section 33.

(2) The committee shall make a best estimate of the value of the liquid assets available to meet the liquidation costs, as estimated in sub-regulation (1).
(3) Where the estimated value of the liquid assets under sub-regulation (2) is less than the estimated liquidation costs under sub-regulation (1), the committee shall approve a plan providing for contribution for meeting the difference between the two.
(4) The resolution professional shall submit the plan approved under sub-regulation (3) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be.

***Explanation**.-For the purposes of this regulation, 'liquidation costs' shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.*

*39C. **Assessment of sale as a going concern**.*

(1) While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may recommend that the liquidator may first explore sale of the corporate debtor as a going concern under clause (e) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 or sale of the business of the corporate debtor as a going concern under clause (f) thereof, if an order for liquidation is passed under section 33.

(2) Where the committee recommends sale as a going concern, it shall identify and group the assets and liabilities, which according to its commercial considerations, ought to be sold as a going concern under clause (e) or clause (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

(3) The resolution professional shall submit the recommendation of the committee under sub-regulations (1) and (2) to the Adjudicating Authority while filing the approval or decision of the committee under section 30 or 33, as the case may be."

*39D. **Fee of the liquidator***

While approving a resolution plan under section 30 or deciding to liquidate the corporate debtor under section 33, the committee may, in consultation with the resolution professional, fix the fee payable to the liquidator, if an order for liquidation is passed under section 33, for –

(a) the period, if any, used for compromise or arrangement under section 230 of the Companies Act, 2013;

(b) the period, if any, used for sale under clauses (e) and (f) of regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016; and

(c) the balance period of liquidation."

9. In agenda item No.10 (iv) of the 11th meeting of CoC held on 07.11.2019, the CoC with more than 66% voting share approved liquidator fee which is on the same lines as in Regulation 4 (2)(b) of the Liquidation process Regulations, 2016. The relevant Rule 4 of the Liquidation Process Regulations, 2016 is as under:-

"4. Liquidator's fee.

(1) The fee payable to the liquidator shall be in accordance with the decision taken by the committee of creditors under regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) In cases other than those covered under sub-regulation (1), the liquidator shall be entitled to a fee-

(a) at the same rate as the resolution professional was entitled to during the corporate insolvency resolution process, for the period of compromise or arrangement under section 230 of the Companies Act, 2013 (18 of 2013); and

(b) as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, for the balance period of liquidation, as under:

Amount of Realisation / Distribution (In rupees)	*Percentage of fee on the amount realised / distributed*		
	in the first six months	*in the next six months*	*Thereafter*
Amount of Realisation (exclusive of liquidation costs)			
On the first 1 crore	*5.00*	*3.75*	*1.88*

On the next 9 crore	*3.75*	*2.80*	*1.41*
On the next 40 crore	*2.50*	*1.88*	*0.94*
On the next 50 crore	*1.25*	*0.94*	*0.51*
On further sums realized	*0.25*	*0.19*	*0.10*
Amount Distributed to Stakeholders			
On the first 1 crore	*2.50*	*1.88*	*0.94*
On the next 9 crore	*1.88*	*1.40*	*0.71*
On the next 40 crore	*1.25*	*0.94*	*0.47*
On the next 50 crore	*0.63*	*0.48*	*0.25*
On further sums distributed	*0.13*	*0.10*	*0.05*

(3) Where the fee is payable under clause (b) of sub-regulation (2), the liquidator shall be entitled to receive half of the fee payable on realisation only after such realised amount is distributed.

Clarification: Regulation 4 of these regulations, as it stood before the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 shall continue to be applicable in relation to the liquidation processes already commenced before the coming into force of the said amendment Regulations.".

10. Regulation 39D of the CIRP Regulations, 2016 require the CoC to fix the fee payable to the Liquidator separately for the three periods specified therein. In the present case, the CoC has not specified the fee for the three periods separately and especially, no fee is fixed for the period, if any, used for compromise or arrangement under Section 230 of the Companies Act, 2013. It is therefore, held that the provisions of Regulation 4(1) of the Liquidation Process Regulations, 2016 are not applicable in the present case.

The Liquidator will be therefore, entitled to fee as per Regulation 4(2) & (3) of the Liquidation Process Regulations, 2016.

11. The CoC has not made any recommendation regarding sale of the corporate debtor as a going concern (refer Regulation 39C of the CIRP Regulations, 2016. Therefore, the Liquidator is directed to refer to Regulation 32A of the Liquidation Process Regulation, 2016 and take necessary action.

12. The CoC has also not made compliance of Regulation 39 B of the CIRP Regulations, 2016 regarding meeting of liquidation costs and has not approved the plan providing for contribution for meeting the difference between the estimate of value of liquid assets and the estimated liquidation costs. The Liquidator is, therefore, directed to take necessary action under Regulation 2A of the Liquidation Process Regulations, 2016 regarding contribution to liquidation costs.

13. It is directed that all the directions/requirements and provisions of Chapter III of the Code and Liquidation Process Regulations, 2016 shall be strictly complied with. Some of the directions are as under:-

i) That as per Section 33(5) of the Code and subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted against the corporate debtor;

Provided that a suit or other legal proceedings may be instituted by the Liquidator on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority;

ii) That the provisions of sub-section (5) of Section 33 of the Code shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

iii) That this order of liquidation under Section 33 of the Code shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator;

iv) That all the powers of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested in the Liquidator; and

v) That the personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in managing the affairs of the corporate debtor and provisions of Section 19 of the Code shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the Liquidator for references to the Interim Resolution Professional.

14. The Liquidator shall publish public announcement in accordance with Regulation 12 of the 2016 Regulations and in Form B of Schedule II of these Regulations within five days from receipt of this order calling upon the stake holders to submit their claims as on liquidation commencement date and provide the last date for submission of claim which shall be 30 days from the liquidation commencement date.

15. It is further directed that the announcement shall be published in accordance with Regulation 12(3) as under:-

> *"(a) In one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the liquidator, the corporate debtor conducts material business operations;*
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> *(b) on the website, if any, of the corporate debtor; and*
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> *(c) on the website, if any, designated by the Board for this purpose."*

16. In accordance with Regulation 13 of the 2016 Regulations, the Liquidator shall file his preliminary report within 75 days and to file regular progress reports as per Rule 15 of the 2016 Regulations every fortnightly thereafter.

17. It is clarified that the Financial Creditors are not debarred from having recourse to enforce the personal guarantees and to take proper steps in this regard.

18. The Liquidator shall take into his possession the assets of the Corporate Debtor.

19. Thus, CA No.1058/2019 stands disposed of.

20. Copy of this order be supplied to the Applicant/Resolution Professional as well as to the Registrar of Companies, Punjab and Chandigarh. The Registry is also directed to send a copy of this order at the e-mail address of the Liquidator.

Pronounced in open court.

Sd/-	Sd/-
(Ajay Kumar Vatsavayi) Member(Judicial)	(Pradeep R. Sethi) Member (Technical)

December 18, 2019
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CA No.1058/2019 IN
CP (IB) No. 340/Chd/Pb/2018